

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2000-517-C - ORDER NO. 2001-95

FEBRUARY 2, 2001

IN RE:	Application of Lightyear Communications,)	ORDER
	Inc. for a Certificate of Public Convenience)	GRANTING
	and Necessity to Provide Resold and)	CERTIFICATE
	Facilities-Based Local Exchange)	
	Telecommunications Services and Facilities-)	
	Based Long Distance Telecommunications)	
	Services and For Flexible Regulation of its)	
	Local Exchange Services and Alternative)	
	Regulation of its Long Distance Services)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Lightyear Communications, Inc. ("Lightyear" or the "Company") for authority to provide resold and facilities-based local exchange service and facilities-based long distance service in the State of South Carolina. The Company also requests that the Commission regulate its local telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. Additionally, Lightyear requests that the Commission regulate its long distance business service offerings in accordance with the principles and procedures established for alternative regulation in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Application was filed pursuant to S.C. Code Ann. Section 58-9-280(B) (Supp. 2000), 58-9-520 (Supp. 2000) and Section 253 of the Telecommunications Act of 1996.

By letter, the Commission's Executive Director instructed Lightyear to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Lightyear's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. On December 1, 2000, a Petition to Intervene was filed by the South Carolina Telephone Coalition (SCTC). Counsel for SCTC, on December 8, 2000, filed with the Commission a Stipulation in which Lightyear stipulated that it would not provide any local service to any customer located in a rural incumbent's service area unless and until Lightyear provided written notice of its intent prior to the date of the intended service. Lightyear also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Lightyear agrees to abide by all State and Federal laws and to participate, to the extent that it may be required to do so by the Commission, in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Lightyear provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

On December 18, 2000, Lightyear filed a Motion for Expedited Review of its Application. By its Motion, Lightyear requested that the Commission grant expedited review of its application and waive the requirement of a formal hearing on the application. In support of its Motion, Lightyear offered that it had published the Notice of Filing, and that Lightyear and the South Carolina Telephone Coalition agreed to a

stipulation and as a result the South Carolina Telephone Coalition withdrew its opposition in this proceeding. The Commission previously granted Lightyear a Certificate of Public Convenience and Necessity to provide resold long distance telecommunications services in South Carolina in Docket No. 94-060-C, Order No. 1994-659, dated July 13, 1994. Lightyear further stated that it waives its right to a formal hearing on the application and stated that the Commission has discretion under S.C. Code Ann. § 58-9-280(B)(Supp. 2000) and the South Carolina Administrative Procedures Act to consider the application without a hearing. In support of the Motion and for consideration of the application, Lightyear filed the verified testimony of Mr. John J. Greive, Director of Legal Services and General Counsel.

The Commission in its regularly scheduled Commission Meeting on January 9, 2001, considered Lightyear's Motion For Expedited Review. The Commission recognizes Lightyear is presently certified to operate as a reseller of interexchange services having been granted that authority by Order No. 1994-659, dated July 13, 1994 in Docket No. 1994-060-C. As no opposition to Lightyear's Motion For Expedited Review was received, the Commission will grant Lightyear's Motion For Expedited Review and consider Lightyear's Application in the Commission Meeting with court reporter present. The Commission's discussion and deliberation in the presence of a court reporter and with verified testimony of the witness will be deemed a hearing for the purposes of consideration of the Application.

S.C. Code Ann. §58-9-280(B) (Supp. 2000) provides that the Commission may grant a certificate to operate as a telephone utility...to applicants proposing to furnish

local telephone service in the service territory of an incumbent LEC.... Mr. Greive's testimony reveals Lightyear wishes to provide resold and facilities-based local exchange service and long distance telecommunications services in South Carolina. The Company also requests that the Commission regulate its business services, consumer card, and operator service offerings in accordance with the principles and procedures established by Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Additionally, the Company requests that the Commission adopt the flexible rate structure for its local exchange service offerings similar to that approved by Order No. 98-165 in Docket No. 97-467-C.

The testimony addresses Lightyear's managerial, technical, and financial ability to provide telecommunications services in South Carolina. Lightyear was incorporated under the laws of the state of Kentucky as UniDial, Incorporated. The Company subsequently changed its name twice from UniDial Communications, Inc. to Lightyear Communications, Inc. on May 4, 2000.

Regarding the Company's technical ability to provide telecommunications services in South Carolina, Lightyear will bill its customers directly and the Company utilizes a nationwide toll free number for its customer service. Lightyear has installed network switches in several cities including Phoenix, Arizona, San Diego, California, Miami, Florida, and Seattle, Washington. The Company is certified to provide its local and long distance services in many states. The record reveals Lightyear currently holds Certificates of Public Convenience and Necessity or has met entry requirements for the provision of interexchange telecommunications service in every state except Alaska. The Company is authorized to offer either resold or facilities-based local exchange services,

or both, in several states including Alabama, Delaware, Kentucky, Louisiana, Pennsylvania, and Washington, D.C.

The record also provides information on the managerial personnel of Lightyear. J. Sherman Henderson, III is the President and Chief Executive Officer. Henderson was instrumental in the growth and success of Charter Network, a long distance carrier service five Midwestern states; he has over twenty-five years of business experience, including sales, marketing, and management. Andy McKay is the Company's Chief Financial Officer. McKay has a Bachelor of Science in Engineering from Georgia Tech, received honors from the University of Georgia School of Law, and has a Certified Public Accountant certificate from the State of Illinois. Prior to becoming employed with Lightyear in 196, McKay had fourteen years of experience practicing corporate and finance law with an Atlanta-based firm. Lightyear's Chief Operating Officer is John E. (Jack) Roth, Jr. Roth previously held the position of Senior Vice President of Planning and Development and Director of Business Development, Mergers and Acquisitions at BellSouth. Prior to BellSouth, Roth began Integrated Communications Systems, a telecommunication software company – this company was later acquired by BellSouth as a marketing subsidiary and renamed Bell Information Networks, Inc. Michael Johnson is Lightyear's Chief Technology Officer. Johnson has both a Bachelor of Science in Electrical Engineering and a Master of Business Administration from Texas A&M University. Prior to becoming employed with Lightyear, Johnson was employed at Intermedia Communications, where he served as Director of Enhanced Data Services/Marketing and as Director of Wide Area Network Engineering. Johnson's

responsibilities at Intermedia Communications included the development, design, and deployment of Intermedia's frame relay, ATM, Telemetry, VPDN, and DSL networks. Greive testified Lightyear has a solid financial base from which to begin operations as a resale and facilities-based provider of telecommunications services.

Greive's testimony also reveals Lightyear's plan for offering its services in South Carolina. The Company will offer its local exchange services initially within the present operating areas of BellSouth and its facilities-based interexchange services will be offered throughout the State of South Carolina. Lightyear will market its services through direct sales, large business and partnership marketing.

After full consideration of the applicable law, the Company's Motion for Expedited Review, the Company's Application, and the verified testimony of Mr. Greive, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Lightyear is organized as a corporation under the laws of the State of Kentucky and has received a certificate from the Secretary of State of South Carolina to transact business within South Carolina as a foreign corporation.

2. The Commission finds Lightyear has the technical, financial, and managerial resources sufficient to provide the services requested. S.C. Code Ann. §58-9-280(B)(1)(Supp. 2000)

3. The Commission finds Lightyear will provide the services which will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2)(Supp. 2000)

4. The Commission finds Lightyear's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3)(Supp. 2000)

5. The Commission finds Lightyear will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4)(Supp. 2000)

6. The Commission finds that the provision of local exchange service by Lightyear "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280 (B)(5)(Supp. 2000)

CONCLUSIONS OF LAW

1. The Application of Lightyear for a Certificate of Public Convenience and Necessity to provide competitive intrastate resold and facilities-based local exchange services in South Carolina and facilities-based long distance telecommunications services in South Carolina is approved. Lightyear is hereby authorized to provide competitive local exchange services in non-rural areas in South Carolina. The terms of the Stipulation between Lightyear and SCTC are approved, and adopted as a portion of this Order. Any proposal to provide such service to rural service areas is subject to the terms of the Stipulation.

2. Lightyear shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. Any proposed change in the maximum rates reflected in the tariff for local services, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking

proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. Section 58-9-540 (Supp. 1999).

3. Lightyear shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, and tests and repairs. In addition, Lightyear shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Lightyear shall file with the Commission the names, addresses, and telephone numbers of those representatives within thirty (30) days of receipt of this Order. The Company shall utilize the "Authorized Utility Representative Information" form which can be located at the Commission's website at www.psc.state.sc.us/forms to file the names of these representatives with the Commission. Further, Lightyear shall promptly notify the Commission in writing if the representatives are replaced.

4. Lightyear shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

5. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In

recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Lightyear to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, Lightyear shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

6. Lightyear’s local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Under flexible regulation for local exchange service offerings, Lightyear shall file with the Commission tariffs which shall include a maximum rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels. Further, local exchange service tariffs are presumed valid upon filing, subject to the Commission’s right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing will be suspended pending further Order of the

Commission. Additionally, Lightyear, under the flexible regulatory scheme as approved by Order No. 98-165 in Docket No. 87-467-C, will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

7. By its Application, Lightyear requested waivers from Commission requirements of (1) any record keeping regulations that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts; (2) maintaining its book and records required under 26 S.C. Code Ann. Regs. 103-610 (1976) within the State of South Carolina; (3) publishing local exchange directories as required by 26 S.C. Code Ann. Regs. 103-631 (1976 & Supp. 2000); and (4) any reporting requirements which are not applicable to competitive providers such as Lightyear because such requirements (a) are not consistent with the demands of the competitive market; or (b) they constitute an undue burden on a competitive provider, thereby requiring an ineffective allocation of resources. We grant the Company's request for a waiver of 26 S.C. Code Ann. Regs. 103-610 and 103-631. The record reveals that the Company will maintain its books and records at its headquarters in Louisville, Kentucky. Furthermore, according to the record, in the event that the Commission finds it necessary to review Lightyear's books, this information will be provided upon request to the Commission or Lightyear will bear the expense of travel for the Commission Staff to examine the books and records located outside South Carolina. Additionally, the records reveals Lightyear will make arrangements with the incumbent local exchange carriers (ILECs) whereby the names of Lightyear's customers will be included in the directories published by the ILECs. We also grant the Company's request that it be allowed to maintain its books of

accounts in accordance with Generally Accepted Accounting Principles. We deny Lightyear's request for a waiver of any reporting requirements which are not applicable to competitive providers as this request lacks specificity. In the future, the Company can request a waiver of a specific regulation(s) and this Commission will consider the Company's request at that time. However, Lightyear is directed to comply with all other Commission regulations unless expressly waived by the Commission.

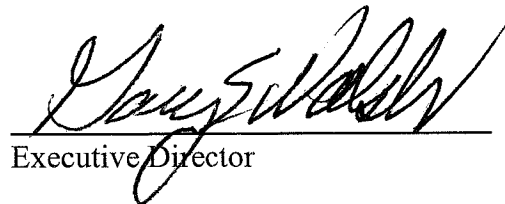
8. We also grant Lightyear's request for alternative regulation of its long distance business offerings as set for in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under alternative regulation, Lightyear shall not be required to state maximum rates (caps) for its business service offerings, consumer card service offerings, and operator service offerings. Such rates shall be presumed valid upon filing, subject to the Commission's right within seven (7) days to institute an investigation of the tariff filing, in which case such filing shall be suspended pending further Order of the Commission. Further, Lightyear is required to file modifications to its interexchange tariff to conform with procedures established for alternative regulation.

9. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2000-NUMBER-C

Re: Application of Lightyear Communications,)
Inc. f/k/a Unidial Communications, Inc. for)
a Certificate of Public Convenience and)
Necessity to Provide Local Exchange Tele-)
communications Services in the State of)
South Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Lightyear Communications, Inc. f/k/a Unidial Communications, Inc. ("Lightyear") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Lightyear' Application. SCTC and Lightyear stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Lightyear, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. Lightyear stipulates and agrees that any Certificate which may be granted will authorize Lightyear to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. Lightyear stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. Lightyear stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and

until Lightyear provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Lightyear acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Lightyear stipulates and agrees that, if Lightyear gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Lightyear will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Lightyear acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

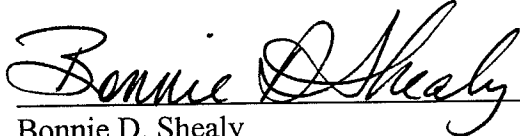
7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Lightyear, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Lightyear Communications agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. Lightyear Communications hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 6th day of December, 2000.

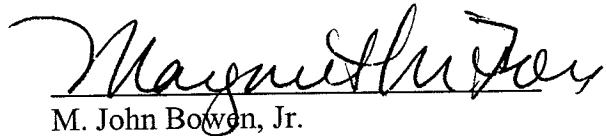
Lightyear Communications, Inc.
f/k/a Unidial Communications, Inc.



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ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.

Chesnee Telephone Company

Chester Telephone Company

Farmers Telephone Cooperative, Inc.

Ft. Mill Telephone Company

Heath Springs Telephone Company Inc.

Home Telephone Company, Inc.

Lancaster Telephone Company

Lockhart Telephone Company

McClellanville Telephone Company

Norway Telephone Company

Palmetto Rural Telephone Cooperative, Inc.

Piedmont Rural Telephone Cooperative, Inc.

Pond Branch Telephone Company

Ridgeway Telephone Company

Rock Hill Telephone Company

Sandhill Telephone Cooperative, Inc.

St. Stephen Telephone Company

West Carolina Rural Telephone Cooperative, Inc.

Williston Telephone Company

BEFORE
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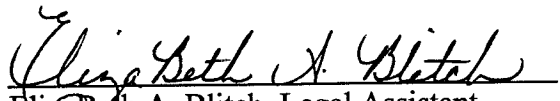
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communications Services in the State of)
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_____)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blich, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

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December 8, 2000

Columbia, South Carolina